

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 245

IRWIN STEINGUT AND HAROLD E. BLODGETT, AS
RECEIVERS OF THE ASSETS IN NEW YORK OF
RUSSO-ASIATIC BANK, PETITIONERS

v.

GUARANTY TRUST COMPANY OF NEW YORK, JAMES
A. TILLMAN, JESSE C. MILLARD AND UNITED
STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This is a companion case to *Guaranty Trust Co. v. United States*, Nos. 239 and 240. The facts are set forth and the issues discussed in the Government's Brief in Opposition in those cases.

The petitioners herein, the receivers for the Russo-Asiatic Bank appointed pursuant to Section 977-b of the New York Civil Practice Act, are seeking review of the judgment below which held that they were not entitled to the deposits in the Guaranty Trust Company which formerly stood to the credit of the Russo-Asiatic Bank. The receivers' action below was consolidated for trial purposes with the suits by the United States against the Guaranty Trust Company for the re-

covery of the same deposits. The district court made one set of findings of fact applicable both to the receivers' action and to those of the United States; the cases were argued together in the court below; and that court entered but one opinion affirming the judgments of the district court.

With respect to the receivers' claim, the lower courts held that (1) the Soviet banking decrees were intended to have extraterritorial effect (R. 3064, 3072-3075), (2) by virtue of the recognition of the Soviet Union and the Litvinov Assignment, the United States succeeded in November 1933 to Soviet Russia's title to the Russo-Asiatic credit balance in Guaranty Trust Company (R. 3064, 3076); (3) when the receivers were first appointed in 1936, and at all times thereafter, Russo-Asiatic had no assets in New York, and the receivers consequently "took nothing by their appointment", which was limited in terms to Russo-Asiatic's property in New York (R. 3065, 3076-3077); (4) if the appointing orders nevertheless be read to encompass the instant accounts, they necessarily rest on the non-recognition of the Soviet nationalization decrees and therefore conflict with *United States v. Pink*, 315 U. S. 203 (R. 3065, 3077-3080); and (5) in any case, the New York statutory scheme for distribution of assets to Russo-Asiatic's creditors contravenes the federal policy which the *Pink* case declares paramount (R. 3065, 3077-3080).

We submit that these holdings of both courts below and their rejection of the receivers' claim are correct, and that the decision of this Court in *United States v. Pink, supra*, is completely dispositive of the questions which petitioners seek to raise in the instant case, particularly in view of the undisturbed finding below that Russo-Asiatic was never authorized to do and never did business in the United States (R. 224, 3065, 3078), and the local authority holding ineffective attachments issued against Russo-Asiatic, even prior to recognition. *Issaia v. Russo-Asiatic Bank*, 266 N. Y. 37.

For the reasons set forth more fully in our Brief in Opposition in Nos. 239 and 240, the petitions in all the *Guaranty Trust Company* cases should be denied. Nevertheless, we believe that, should this Court grant certiorari in Nos. 239 and 240, certiorari should also be granted in the instant case in order that this Court will have before it all the parties and all the contentions which were before both courts below.¹

✓ PHILIP B. PERLMAN,
Solicitor General.

SEPTEMBER 1947.

¹ The United States is filing a conditional cross-petition in the receivers' action (No. 315) asking that if the petition in the *Guaranty Trust Company* case be granted this Court also review that part of the holding of the courts below in the receivers' action which denied the motions of the United States for substitution and consolidation.